

§ 305.42

(b) The provisions listed under § 305.32 of this part also apply to the penalty performance measures.

§ 305.42 Penalty phase-in.

States are subject to the performance penalties described in § 305.40 based on data reported for FY 2001. Data reported for FY 2000 will be used as a base year to determine improvements in performance during FY 2001. There will be an automatic one-year corrective action period before any penalty is assessed. The penalties will be assessed and then suspended during the corrective action period.

§ 305.60 Types and scope of Federal audits.

(a) OCSE will conduct audits, at least once every three years (or more frequently if the State fails to meet performance standards and reliability of data requirements) to assess the completeness, authenticity, reliability, accuracy and security of data and the systems used to process the data in calculating performance indicators under this part;

(b) Also, OCSE will conduct audits to determine the adequacy of financial management of the State IV-D program, including assessments of:

(1) Whether funds to carry out the State program are being appropriately expended, and are properly and fully accounted for; and

(2) Whether collections and disbursements of support payments are carried out correctly and are fully accounted for; and

(c) OCSE will conduct audits for such other purposes as the Secretary may find necessary.

(1) These audits include audits to determine if the State is substantially complying with one or more of the requirements of the IV-D program (with the exception of the requirements of section 454(24) of the Act relating to statewide-automated systems and section 454(27)(A) and (B)(i) relating to the State Disbursement Unit) as defined in § 305.63 of this part. Other audits will be conducted at the discretion of OCSE.

(2) Audits to determine substantial compliance will be initiated based on substantiated evidence of a failure by the State to meet IV-D program re-

45 CFR Ch. III (10–1–12 Edition)

quirements. Evidence, which could warrant an audit to determine substantial compliance, includes:

(i) The results of two or more State self-reviews conducted under section 454(15)(A) of the Act which: Show evidence of sustained poor performance; or indicate that the State has not corrected deficiencies identified in previous self-assessments, or that those deficiencies are determined to seriously impact the performance of the State's program; or

(ii) Evidence of a State program's systemic failure to provide adequate services under the program through a pattern of non-compliance over time.

(d) OCSE will conduct audits of the State's IV-D program through inspection, inquiries, observation, and confirmation and in accordance with standards promulgated by the Comptroller General of the United States in "Government Auditing Standards."

§ 305.61 Penalty for failure to meet IV-D requirements.

(a) A State will be subject to a financial penalty and the amounts otherwise payable to the State under title IV-A of the Act will be reduced in accordance with § 305.66:

(1) If on the basis of:

(i) Data submitted by the State or the results of an audit conducted under § 305.60 of this part, the State's program failed to achieve the paternity establishment percentages, as defined in section 452(g)(2) of the Act and § 305.40 of this part, or to meet the support order establishment and current collections performance measures as set forth in § 305.40 of this part; or

(ii) The results of an audit under § 305.60 of this part, the State did not submit complete and reliable data, as defined in § 305.1 of the part; or

(iii) The results of an audit under § 305.60 of this part, the State failed to substantially comply with one or more of the requirements of the IV-D program, as defined in § 305.63; and

(2) With respect to the immediately succeeding fiscal year, the State failed to take sufficient corrective action to achieve the appropriate performance levels or compliance or the data submitted by the State are still incomplete and unreliable.

(b) The reductions under paragraph (c) of this section will be made for quarters following the end of the corrective action year and will continue until the end of the first quarter throughout which the State, as appropriate:

(1) Has achieved the paternity establishment percentages, the order establishment or the current collections performance measures set forth in § 305.40 of this part;

(2) Is in substantial compliance with IV-D requirements as defined in § 305.63 of this part; or

(3) Has submitted data that are determined to be complete and reliable.

(c) The payments for a fiscal year under title IV-A of the Act will be reduced by the following percentages:

(1) One to two percent for the first finding under paragraph (a) of this section;

(2) Two to three percent for the second consecutive finding; and

(3) Not less than three percent and not more than 5 percent for the third or a subsequent consecutive finding.

(d) The reduction will be made in accordance with the provisions of 45 CFR 262.1(b)–(e) and 262.7.

§ 305.62 Disregard of a failure which is of a technical nature.

A State subject to a penalty under § 305.61(a)(1)(ii) or (iii) of this part may be determined, as appropriate, to have submitted adequate data or to have achieved substantial compliance with one or more IV-D requirements, as defined in § 305.63 of this part, if the Secretary determines that the incompleteness or unreliability of the data, or the noncompliance with one or more of the IV-D requirements, is of a technical nature which does not adversely affect the performance of the State's IV-D program or does not adversely affect the determination of the level of the State's paternity establishment or other performance measures percentages.

§ 305.63 Standards for determining substantial compliance with IV-D requirements.

For the purposes of a determination under § 305.61(a)(1)(iii) of this part, in order to be found to be in substantial

compliance with one or more of the IV-D requirements as a result of an audit conducted under § 305.60 of this part, a State must meet the standards set forth below for each specific IV-D State plan requirement or requirements being audited and contained in parts 302 and 303 of this chapter, measured as follows:

(a) The State must meet the requirements under the following areas:

(1) Statewide operations, § 302.10 of this chapter;

(2) Reports and maintenance of records, § 302.15(a) of this chapter;

(3) Separation of cash handling and accounting functions, § 302.20 of this chapter; and

(4) Notice of collection of assigned support, § 302.54 of this chapter.

(b) The State must provide services required under the following areas in at least 90 percent of the cases reviewed:

(1) Establishment of cases, § 303.2(a) of this chapter; and

(2) Case closure criteria, § 303.11 of this chapter.

(c) The State must provide services required under the following areas in at least 75 percent of the cases reviewed:

(1) Collection and distribution of support payments, including: collection and distribution of support payments by the IV-D agency under § 302.32(b) of this chapter; distribution of support collections under § 302.51 of this chapter; and distribution of support collected in title IV-E foster care maintenance cases under § 302.52 of this chapter;

(2) Establishment of paternity and support orders, including: Establishment of a case under § 303.2(b) of this chapter; services to individuals not receiving TANF or title IV-E foster care assistance, under § 302.33(a)(1) through (4) of this chapter; provision of services in intergovernmental IV-D cases under § 303.7(a), (b), (c), (d)(1) through (5) and (7) through (10), and (e) of this chapter; location of non-custodial parents under § 303.3 of this chapter; establishment of paternity under § 303.5(a) and (f) of this chapter; guidelines for setting child support awards under § 302.56 of this chapter; and establishment of support